***United States Court of Appeals***

***for the Second Circuit***


# RESPONDENT'S BRIEF

ORIGINAL WITH PROOF OF SERVICE

# 74-2557

## UNITED STATES COURT OF APPEALS

*for the*

## SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LIZDALE KNITTING MILLS, INC.,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

# BRIEF OF RESPONDENT LIZDALE KNITTING MILLS, INC.

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# BRIEF OF RESPONDENT LIZDALE KNITTING MILLS, INC.

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## ISSUES PRESENTED

1. Whether there is substantial evidence in the record to sustain the Board's findings that four employees were dismissed because of their union activities and that respondent engaged in other violations of the Act.

2. Whether the denial of respondent's pre-trial Motion to Produce affidavits of witnesses prior to the hearing violated respondent's right to procedural due process.

## ARGUMENT

### THERE IS NOT SUBSTANTIAL EVIDENCE IN THE RECORD TO SUSTAIN THE BOARD'S FINDING THAT FOUR EMPLOYEES WERE DISMISSED BECAUSE OF THEIR UNION ACTIVITIES AND THAT RESPONDENT ENGAGED IN OTHER VIOLATIONS OF THE ACT.

This case, unlike most other decisions of the National Labor Relations Board which come before this Court for review, contains a strongly worded dissenting opinion from Board Member Ralph E. Kennedy which sharply disagrees with the two other Board members constituting the panel majority. We submit that this dissent brings into clear focus the manifest errors of the decision of the Board majority in almost routinely affirming the decision of the Administrative Law Judge who heard this matter. In that decision, respondent was found to have committed all the violations alleged in the complaint. Indeed, as pointed out in the dissenting opinion (A. 38), the Administrative Law Judge even found respondent guilty of violations which were not even alleged in the complaint.

The Board majority found that respondent had violated the Act in the following respects:

1. The discharge of four employees (known as the "Ceballos Family") because of their union activities.

2. Through its supervisor, Ella Herskovitz, threatening employees with discharge if they signed cards for the union.

3. Again, through this same supervisor, coercing employees by ordering non-employee union representatives out of respondent's plant.

We strongly urge the Court to find, after reviewing the

record in this case, that there is not substantial evidence to support these findings by the Board majority.

A. The discharge of the Ceballos family:

The Board majority and the Administrative Law Judge found that these four employees had been dismissed by respondent because of their union activities. Crucial to this conclusion are the findings by the Board majority (A. 19) and the Administrative Law Judge (A. 7) that respondent knew of these union activities. Indeed, the Board majority denotes this a "threshold and key issue" of the discharges (A. 19).

This knowledge of the employees' union activity is imputed to respondent by the testimony of the four employees and the union's representative that officials of the company observed the employees, from a second story window, talking to the union organizer on the outside stairway leading into the plant (A. 20). This crucial finding upon which the violation is based is, however, a physical impossibility as pointed out by the dissenting Board member (A. 29) and as made abundantly clear by post-hearing written statements filed by Board Counsel (A. 52) and by Respondent's Counsel (A. 51).

The solicitation by the union of the Ceballos family occurred, according to the testimony of the union's organizer, on the outside steps leading into the plant (A. 59). This is the only union activity it is claimed respondent observed and it is this precise union activity that the Board majority and the Administrative Law Judge found caused the dismissals (A. 21; 7).1/

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1/ There is no evidence in the record of any other union activity

These steps, which are on the outside of the plant leading into the premises, are covered by a roof (to protect persons from the rain) which protrudes out from the building (A. 107; 52; 89). The roof is about half way up the side of the building - between the top of the stairs and the bottom of the second story window (referred to as window #6 in the record) from whence company officials were supposed to have observed the union solicitation of the four employees (A. 110; 89).

This overhanging roof over the stairs blocks the view of the stairs from this second story window - all the observer in the window can see is the topside of the roof (A. 113; 52). However, by leaning out of this window, a person can see over the overhanging roof to a point in front of the stairway, where the roof, which is below him, no longer blocks his view. Now, this is the exact point that Board Counsel and Respondent's Counsel agreed upon in the post-hearing statements each filed with the Administrative Law Judge following a physical inspection of the premises by them. Thus, as set forth in par. 1 of respondent's statement (A. 51):

> "The ground in front of the outside stairway to Respondent's plant is visible to an observer in window #6 to a point two feet from the front of the stairway so that a person standing within two feet of the stairway cannot be seen from this window"

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by these employees that was, directly or indirectly, known to respondent. When these employees signed cards for the union they did it on the other side of the factory out of sight of the plant windows (A. 87-88). They do not claim that this activity was observed by respondent. Similarly, when one of them, Abelardo Ceballos, distributed cards to other workers in the plant, he admits that this was not seen by any company official (A. 86).

Board's Counsel's statement similarly states (A. 53):

> "The ground in front of the outside stairway to Respondent's plant is visible to an observer in window #6 to a point two feet from the foot of the stairway"[2/]

Faced with these physical facts, which he himself had directed the parties to supply, the Administrative Law Judge skirts around them and invents his own facts. The manner in which the Administrative Law Judge does this is so blatantly unfair that the dissenting Board member felt compelled to note that he "distorts a portion of Respondent's statement 180 degrees in an effort to bolster his finding" (A. 30). The Administrative Law Judge states in his decision that "Counsel for Respondent concedes that the ground in front of the outside stairway at Respondent's plant is visible to an observer in window #6 to a point two feet from the front of the stairway" so employees standing <u>within</u> two feet of the stairs could clearly see, and be seen, by company officials leaning out of the upstairs window (A. 7). However, it is patently clear that respondent's counsel meant precisely the opposite - that from the window everything could be seen <u>except</u> the stairs and the sidewalk up to two feet in front of the stairs. This is shown by the continuation of the sentence quoted by the Administrative Law Judge, which he so pointedly ignored, "so that a person standing within two feet of the stairway cannot be seen from the window" (A. 52). This is a classic example of lifting a quote out of context - a "gross unfairness" in the words of the dissenting Board member (A. 31). Partial quotes taken out of context,

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2/ Indeed, as pointed out in the dissent, Board Counsel in his brief reinforced this crucial fact (A. 29, ftn 13).

which radically change the meaning of a critic's review, may be the way movies and plays are advertised, but such methods are hardly fitting for a governmental administrative proceeding.

The Board majority's method of circumventing the physical facts concerning the premises is perhaps more subtle but equally erroneous (A. 21, ftn 5). They find, without a shred of evidence in the record to support them, that since the ground two feet in front of the stairway can be seen from the upstairs window, a person standing upright only one foot from the stairway or on the stairway can be seen because of his height. With all due respect to the expertise of the Board, this finding is patent nonsense since the person's height has absolutely nothing to do with the case - it is the overhanging roof which blocks the view. Whether the person is a midget, five feet or even seven feet tall would make no difference - because of the trajectory of the view from the upstairs window - nothing can be seen under the roof until the line of sight reaches out two feet or more in front of the stairs.

These errors by the Administrative Law Judge and inferentially by the Board majority are so totally devoid of any evidentiary support in the record that the substantial evidence test used by Circuit Courts of Appeals in reviewing Labor Board cases is not met in this matter. Indeed, the patent unfairness of the manner in which the Administrative Law Judge overrode physical evidence impelled the dissenting Board member to note that it "casts serious doubts as to the legitimacy of his other factual findings and conclusions" (A. 31).

Arrayed againstthis singular lack of evidentiary support for the Board's case, is the strong evidence placed into the record by respondent establishing that the four employees were discharged for valid reasons totally unconnected with their union activities. Respondent's evidence establishes that beginning in March 1973, management became concerned over shortages of finished goods which were discovered by comparing shipping invoices with production cutting orders (A. 121). These shortages continued into April and May but respondent was not able to discover their cause (A. 121).

In an effort to find the reason for the shortages, on or about May 15, 1973, Supervisor Herskovitz decided to inspect the packages and bags carried by employees as they left the plant (A. 150). At this time, Herskovitz observed two members of the Ceballos family, Luz Villada and Eucarias Ceballos, coming to where she was maintaining her vigil at the plant exit carrying a paper grocery bag. When the two employees noticed the supervisor at the exit, they turned around and went into the dressing room from which they later emerged without the bag and then left the plant (A. 150-151).

When Villada and Ceballos returned to the dressing room with the bag, they were observed by two other employees who happened to be in the room, Anna Iritz and Amparo Gomez (A. 140-141). Iritz and Gomez noticed that Villada and Ceballos left the bag in the dressing room before exiting again (A. 222; 144-145). Iritz and Gomez opened the bag and saw that at the top there was a sweater of the type produced in the plant (A. 141-142; 145).

Believing that the bag had been left behind in error, Iritz and Gomez ran after them in order to give them the bag, but the two had already left the premises (A. 142; 145). They then gave the bag containing the sweaters to Herskovitz (A. 142).

Herskovitz opened the bag and found five sweaters that had been produced by the company. These garments, although finished, had not received the final pressing operation and had not been boxed for shipment (A. 152). The sweaters, each worth $5.98 to $6.98 at retail, had not been purchased by the employees from the company, which sometimes is done (A. 153). These facts were reported to higher management but it was decided not to take any punitive action against the employees involved until a further investigation could be made (A. 123-124).

On May 25th another incident occurred which cast further light upon the shortage problem. At this time, management carefully arranged a pattern of sweaters on a packing table in a particular order (A. 127). When the President of the company returned to this table after answering the telephone, he noticed that the pattern of sweaters had been disturbed and that four to six bundles of sweaters, sixteen to twenty-four in number, were missing (A. 128). In order to be certain, management decided to wait several days until the following week when this particular order of sweaters would be shipped at which time the apparent removal of the sweaters could be verified by the shipping records (A. 129). On May 31st, the actual shortage was verified when shipment was completed (A. 130).

The weight of suspicion fell upon the Ceballos family since

they were alone in the plant (except for certain out-of-sight employees who worked nights) on the date the goods were taken from the packing table. They were all in the plant at that time in order to help Abelardo Ceballos clean up the premises - a task he had been assigned to in March and performed, for extra pay, each Friday after work, including the day the garments were removed from the table (A. 125). These suspicions were reinforced by the fact that the shortages commenced at about the time when Abelardo commenced these extra cleaning duties. Finally, these suspicions were reinforced by the May 15th dressing room incident involving the attempted removal of sweaters from the plant in a bag which also involved two members of the Ceballos group.

In any event, on May 31, management decided to terminate the four employees (A. 130). Mindful of the fact that it did not have an iron-clad case of theft against them, management decided not to tell them the real reason for their termination, but instead, advised them that there was insufficient work for them (A. 131). Management hesitated in stating its real reason because it was fearful of a possible slander action by the employees and, further, because it had no desire to embarrass the four employees (A. 131-132). It is very significant that after the dismissals the shortages ceased (A. 134).

The Administrative Law Judge flat-out disposed of all this uncontroverted evidence by respondent by finding it "quite apparent that Respondent's witnesses were participants in a calculated plan to deceive the Administrative Law Judge" (A. 10-11). As pointed out by the dissenting Board member, the Administrative Law Judge

also labels this evidence "contrived", "an obvious contrivance I will not belabor", "entirely without any foundation from its very inception" and "unworthy of the slightest credibility" (A. 33). The dissenting Board member refused to "rubber stamp" these unsupported geralizations of the Administrative Law Judge and held that these findings of the Administrative Law Judge were not entitled to the normal deference and weight accorded by the Board to factual findings of an Administrative Law Judge (A. 27-28). Indeed, the dissenting Board member observed, after what was apparently a careful reading of the transcript of testimony, that "it is unfortunate that the Administrative Law Judge felt personally challenged by Respondent's witnesses. It is unfortunate because I find nothing in the record which supports such a challenge. More unfortunate is the obvious impact which it had on his Decision. It is clear to me that the violations found were not derived from the record evidence, but from the Administrative Law Judge's suspicions." (A. 27)

The Administrative Law Judge, as noted above, chose to disbelieve all of respondent's witnesses as "unworthy of the slightest credibility" (A. 12) because he regarded the "Ceballos family as simple people who are interested only in seeking redress of their grievances by reciting the factual account of the events" (A. 12). Yet this same Administrative Law Judge found the testimony of two fellow workers, Iritz and Gomez (of the same Hispanic background as the Ceballos group), who had nothing personally to gain from giving testimony about the sweaters in the bag being taken from the plant, "unworthy of the slightest credibility" (A. 12). These

two workers are apparently not "simple people" only reciting the facts, but out-and-out liars, even though, as observed by the dissenting Board member, they "are totally disinterested, with no personal stake in the outcome of these proceedings" (A. 35). These injudicious findings perhaps best illustrate the blind bias and prejudice which is so apparent in the Administrative Law Judge's decision.

The Board majority, nevertheless, "rubber-stamped" the decision of the Administrative Law Judge on the basis that it is their general policy not to overrule the credibility findings of their Administrative Law Judges absent a "clear preponderance" to the contrary (A. 22). The dissenting Board member makes the point, which we endorse and urge to the Court, that the "Act commits to the Board itself, not to the Board's [Administrative Law Judge], the power and responsibility of determining the facts as revealed by a preponderance of the evidence. In my view, the Board cannot abdicate its responsibility as the ultimate finder of facts when objective matters of record fail to support the conclusions of the Administrative Law Judge" (A. 28). Although we recognize that the role of this Court in reviewing the evidence is limited by the "substantial evidence" test, we suggest it should not permit its independent review to become like the Board majority's review of the Administrative Law Judge's findings a cursory automatic approval. To do otherwise, is to countenance a Kafka-like law system - injustices of the trier of the facts gain approval of each reviewing authority in order not to disturb such findings which have already been made since having been once made such factual findings achieve

a standing in and of themselves, no matter how incorrect they may be initially. We submit that the findings of both the Board majority and the Administrative Law Judge cry out to be overturned by this Court.

It should further be noted, as pointed out by the dissenting Board member (A. 35), that at least 15 other employees who also engaged in union activity were not discharged which militates against the finding the dismissals were discriminatory.

B. The alleged threat by Supervisor Herskovitz:

Concerning this aspect of the complaint, the Board majority found violative of the Act an alleged threat by Supervisor Herskovitz that employees signing cards for the union would be discharged (A. 22). Once again, the Administrative Law Judge is upheld on this finding by the Board majority without any apparent analysis by the Board majority. This is so notwithstanding the fact that this remark was supposed to have been made in the English language to a group of employees who, being foreign born, spoke and understood little or no English. Indeed, all the witnesses to this incident required the services of a Spanish interpreter in order to testify. Furthermore, only one, Abelardo Ceballos, could even begin to understand English - the other witnesses only testified as to what Abelardo translated to them in Spanish what he believed Herskovitz had said in English (A. 88).

The testimony of these Spanish-speaking persons, under the circumstances, is rank hearsay and cannot be relied upon as a basis for a statutory violation since Herskovitz might perhaps have said, "Good Day, is everybody having a nice lunch" and, for all we know, Abelardo may have translated this statement to the other employees

as "You will be fired if you sign a card for the union". Indeed, the Administrative Law Judge himself demonstrates how utterly unreliable such hearsay evidence is because of the language barrier by finding that Abelardo testified that Herskovitz stated, "If somebody signed union cards, no more work, fired" (A. 7). Yet, after "translation" by Abelardo, another witness, Marta Guerro, testified that what Herskovitz said was, "If they signed cards the factory would be closed and that everyone would be fired one by one." (A. 8). Now, it is perfectly apparent that these two statements are not the same - a perfect illustration of how very improper it was to have relied upon, let alone admitted, such improper hearsay evidence.

In connection with this incident, the blatant bias and prejudice of the Administrative Law Judge is again demonstrated since he states in his decision that "Herskovitz in her testimonial account did not make a specific denial of the incident" (noting that even if she had she would not have been believed) (A. 8). The dissenting Board member again felt compelled to point out that the Administrative Law Judge "misstates the record" and that he "will not accept credibility resolutions based upon misstatements of the record" (A. 36). As set forth by the dissenting Board member, Herskovitz did specifically deny making the statement; indeed, she denies having spoken to the group at all (A. 36), and the record so indicates (A. 149). The Administrative Law Judge, again without stating reasons or rationale, decided "not to credit" the contrary evidence to three other employees, who, like Iritz and Gomez, have no personal interest in this case (A. 8). Yet the

Board majority still decides to rubber-stamp these findings no matter how unsupported by the evidence and now urges this Court to do the same.

C. The commotion in the plant:

In this aspect of the case, the Board majority and the Administrative Law Judge found a violation in conduct which had not even been alleged in the complaint. This involves a request by respondent that outside union organizers, causing an employee commotion and unrest in the plant, leave the premises. Again, as so well pointed out by the dissenting Board member, it is not to be comprehended how requesting union representatives to leave a plant in order to halt an employee commotion is covered by an allegation concerning threats of employee discharge (A. 38). It is also pointed out that this ruling is directly against other Labor Board cases which hold such conduct does not violate the Act (A. 38).

THE DENIAL OF RESPONDENT'S PRE-TRIAL MOTION TO PRODUCE AFFIDAVITS OF WITNESSES PRIOR TO THE HEARING VIOLATED RESPONDENT'S RIGHT TO PROCEDURAL DUE PROCESS.

One week prior to the opening of the hearing in this matter, Respondent filed with Petitioner a Motion to Produce, a copy of which is appended hereto.[3/] This motion was summarily denied, but was renewed by Respondent at the opening of the hearing before the Administrative Law Judge when it was again denied. The denial of this motion was included in the Exceptions to the Decision of

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3/ Reference to this motion appears in the Chronological List of Relevant Docket Entries (A. 2).

the Administrative Law Judge which Respondent filed with the Board, a copy of which is appended hereto.

This Motion to Produce calls upon petitioner to produce and make available to respondent, at least three days prior to the hearing, copies of affidavits of witnesses who will be called to testify against respondent at the hearing before the Administrative Law Judge. The present practice of the Board, which is set forth in Section 102.118(b) of its Rules and Regulations, makes such affidavits available to a respondent for purposes of cross-examination <u>after</u> the witness has concluded his direct examination. We submit that this procedure is in violation of Section 10(b) of the National Labor Relations Act which provides that hearings before that agency be conducted "so far as practicable.....in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States". The Board's procedure on this score also violates the constitutional requirements of procedural due process applicable to governmental judicial and quasi-judicial processes.

It is only in relatively recent years that the Board has even made such affidavits available after the witness has testified. Prior to that time, the Board resisted all efforts to obtain such affidavits on the grounds that it would interfere with the investigatory and administrative necessity of protecting its witnesses from respondent-initiated reprisals. The Board today still resists all pre-trial discovery procedures on the same old shop-worn basis. Petitioner cannot, however, really demonstrate

that by permitting a respondent to examine affidavits of witnesses before they testify, rather than after, will hinder the proper administration of the Act. The identity of a witness will become known to a respondent as soon as he testifies - what possible difference will it make if such identity is made known three days before the hearing, as requested in this case by the respondent? By that time, the case has long since been investigated, it has been legally reviewed and a formal complaint has issued. What does the Board fear that a respondent will do to hinder the administration of the Act at a point of time three days before the hearing?

The discovery procedures which are so widely used in almost all types of litigation in the federal courts have as their underlying purpose to permit each party to a case to become apprised of his opponent's case before the actual trial is held. In this manner, the result of the trial will depend upon the intrinsic justice of one side's cause and not upon who has the better attorney or who can best surprise his opponent at the trial. We strongly suggest that these same considerations are equally applicable to Labor Board proceedings. There really does not appear to be any reason why a respondent should not know in advance of the hearing the names of the witnesses against him and what such persons will testify to at the hearing. By obtaining such information, a respondent in a Labor Board proceeding, as other litigants in most other federal court cases, will be able to properly prepare his case for the upcoming hearing and not be forced to counter the evidence against him immediately after being apprised of it at

the hearing. Indeed, a United States District Court Judge so held when he held unlawful the Board's practice of denying all pre-trial discovery procedures (McClain Industries v. N.L.R.B., ___ F.Supp. ___ (1974). In that case the Court enjoined the Board hearing until the respondent had been supplied with a list of witnesses to be called five days before the hearing. Although this is a lower court decision, its reasoning is very applicable here.

The Board's limited policy of making available witnesses' affidavits after they testify may perhaps help a respondent in his cross-examination of the witness but, by no means, does it meet the basic purpose of pre-trial discovery procedures of enabling both sides to be equally prepared for trial as a result of learning its adversary's case beforehand. In point of fact, because of the statutory scheme, the Board knows all about a respondent's case and his defenses before the trial since the investigatory powers of the Board set forth in Section 11 of the Act grant it the authority to force a respondent to divulge its case. Yet, comparable rights, not to mention even less-than-comparable rights, are not afforded to a respondent in Labor Board proceedings.

This case is perhaps a classic illustration of the patent unfairness and illegality of the Board's procedures in not honoring a request for the affidavits before the hearing. As noted in the early part of this brief, the crucial question in this case developed at the hearing to be the physical structure of respondent's premises - whether the stairway and the ground directly in front of it can be seen from the second story window. Now, had

respondent been granted copies of witnesses' affidavits before the hearing as requested, it would have become aware that this would be a prime issue at the hearing. Respondent could have possibly hired a professional photographer to take pictures of the premises which would have clearly shown the physical facts or perhaps it might have had a scale model of the building constructed by a profesionally qualified person instead of having to rely upon a rough, out-of-scale sketch at the hearing which was made on the spur of the moment while its witness testified. Indeed with such professional photographs or models much of the conflicting testimony on this score at the hearing could have been avoided. More importantly, if the affidavits had been made available to respondent before the hearing, the entire question of observation of the union activity could have been drawn into sharp focus and this Court might not now be faced with resolving conflicting majority and dissenting opinions as well as conflicting testimony and findings.

It should also be noted that had the affidavits been available before the hearing, no harm could possibly have been done to petitioner's case or its witnesses. None of the persons called by petitioner were in respondent's employ or in any way subject to its control.

We suggest that a free and open government in a democracy should have no reason, in administering justice to its citizens in administrative proceedings, not to, at the least, subject itself to the same pre-trial discovery procedures it forces upon other litigants in its courts. Our government should not operate in secrecy - it should be freely open to its citizens except,

perhaps, where there are powerful overriding considerations. We can perceive no such overriding considerations in this case - it would seem that what is involved is perhaps some administrative inconvenience to the Board. This is hardly a sufficient basis to deny a respondent, who must appear before the agency, of substantial procedural rights.

## CONCLUSION

We strongly urge the Court to deny enforcement to the Board's Order in this case because it is not supported by substantial evidence on the record and because petitioner erred in not making available to respondent affidavits of witnesses before they testified at the hearing.

Respectfully submitted,

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April, 1975.

## APPENDIX A - MOTION TO PRODUCE

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIZDALE KNITTING MILLS, INC.

and

KNITGOODS WORKERS UNION LOCAL 155, INTERNATIONAL LADIES GARMENT WORKERS UNION, AFL-CIO

Case No. 29-CA-3726

MOTION TO PRODUCE

Respondent, Lizdale Knitting Mills, Inc., hereby respectfully moves that the Director, Region 29, National Labor Relations Board produce and make available to Respondent and its attorneys copies of all affidavits of witnesses that will testify at the hearing of this matter before an Administrative Law Judge.

It is further moved that such copies of affidavits be made available at least three days prior to the opening of the hearing in order to afford a reasonable opportunity to respondent and its attorneys to properly prepare its defense to the complaint herein. The respondent asserts that the practice followed at hearings conducted by the National Labor Relations Board of furnishing such copies of affidavits after the witness has testified is prejudicial to the respondent herein and violative of the United States Constitution and the Administrative Practices Procedure Act.

Dated: October 16, 1973

KIMMELL & KIMMELL
Attorneys for Respondent
290 Old Country Road
Mineola, New York

## APPENDIX B - RESPONDENT'S EXCEPTION TO DECISION OF THE ADMINISTRATIVE LAW JUDGE

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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LIZDALE KNITTING MILLS, INC.

and

Case No. 29-CA-3726

KNITGOODS WORKERS UNION LOCAL 155,
INTERNATIONAL LADIES GARMENT WORKERS
UNION, AFL-CIO
- - - - - - - - - - - - - - - - - - - - - - - -

### RESPONDENT'S EXCEPTION TO DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respondent hereby files Exceptions to the Decision of the Administrative Law Judge herein as follows:

1. The finding that Respondent through Supervisor Herskovitz engaged in conduct violative of Section 8(a)(1) of the Act on May 30, 1973 (D 4).

2. The finding that Respondent through Supervisor Herskovitz engaged in conduct violative of the Act on June 4, 1973 by requesting union representatives to leave the plant (D 6).

3. The finding that Respondent discharges Abelardo Ceballos, Luz Villada, Marta Guerrero and Eucarias Ceballos because of union activities in violation of Section 8(a)(3) of the Act (D 7).

4. The denial of Respondent's pre-trial Motion to Produce statements of witnesses prior to the hearing.

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cc: Region No. 29
National Labor Relations Board
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Local 155, I.L.G.W.U.
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New York, N.Y.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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NATIONAL LABOR RELATIONS BOARD,

Petitioner

v

LIZDALE KNITTING MILLS, INC.,

Respondent

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No. 74-2557

CERTFICATE OF SERVICE

The undersigned certifies that three copies of the Respondent's brief in the above-captioned case have this day been served by first-class mail upon counsel for the Petitioner as follows:

Elliott Moore, Deputy Associate General Counsel
National Labor Relations Board
Washington, D.C.

Leonard S. Kimmell

Leonard S. Kimmell
KIMMELL & KIMMELL
Attorneys for Respondent

Dated: Melville, New York
April 7, 1975